



**UNITED STATES DEPARTMENT OF COMMERCE
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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/716,223 11/22/96 VAN SCHOUWENBURG G 961170

IM62/0516

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EXAMINER

SHERRER, C

ART UNIT

PAPER NUMBER

1761

25

DATE MAILED:

05/16/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
08/716,223

Applicant(s)

Schouwenburg

Examiner

Curtis E. Sherrer

Group Art Unit

1761

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☒ expires 3 months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on May 2, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☐ will not be entered because:

- ☐ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

- ☐ Applicant's response has overcome the following rejection(s): _____

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: NoneClaims objected to: NoneClaims rejected: 1, 3, 4, 9-12, and 14-20

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Other

CURTIS E. SHERRER
PRIMARY EXAMINER
ART UNIT 1761

ADVISORY ACTION

Response to After Final Amendment

Applicants' arguments of 05/02/00 have been reviewed but not found to be persuasive. Specifically, Applicants first assert that those in the art would perform the Weiss et al process in a manner that would avoid the solubilization of proteins because this would cause "smearing." Applicants have provided no evidence of this effect or its asserted associated problems. Therefore, these assertions are considered to be based on opinion alone and are therefore not persuasive. This is true also for the assertion with regard to The Joy of Cooking.

The Office does not have the facilities for examining and comparing Applicant's product with the product of the prior art in order to establish that the product of the prior art does not possess the same material structural and functional characteristics of the claimed product. In the absence of evidence to the contrary, the burden is upon the applicant to prove that the claimed are functionally different than those taught by the prior art and to establish patentable differences. See *In re Best*, 562 F.2d 1252, 195 U.S.P.Q. 430 (CCPA 1977); *Ex parte Gray*, 10 U.S.P.Q.2d 1922, 1923 (BPAI).

It is noted that there is no obviousness rejection based on The Joy of Cooking and any arguments directed to such nonexistent rejection are not treated.

With regard to the teachings of the secondary reference, Bauer et al, Applicant asserts that because the addition of sorbic acid is only a suggestion and not necessary that one of ordinary skill in the art would not be motivated use it in the process of Wiener et al. It is

Serial Number: 08/716,223

3

respectfully considered that those in the art would in fact be motivated to add for its art recognized function and therefore inherently it would lower the pH. See *In re Best* above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax phone number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.

A handwritten signature in black ink, appearing to read 'Curtis E. Sherrer', with a stylized flourish at the end.

Curtis E. Sherrer
May 16, 2000